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CURRENT TOPICS

The Birthday Honours

THE legal profession is well represented in the first list of honours of the new reign, and the conferment of a barony of the United Kingdom upon LORD SIMONDS, the Lord Chancellor, will be received with particular pleasure. Solicitors will also note with gratification that the honour of knighthood has been conferred on Mr. G. A. COLLINS, the President of The Law Society. Mr. C. L. CHUTE is one of five new baronets, and among others designated Knights Bachelor are Mr. C. K. ALLEN, Q.C., Mr. H. T. A. DASHWOOD, Registrar of the Court of Arches, of the Court of Faculties, and of the Diocese of London, and Principal Registrar of the Province of Canterbury (admitted 1905), His Honour DAVID DAVIES, Q.C., and Mr. G. C. TOUCHE. The C.B.E. has been awarded to Mr. T. B. BOWEN, Town Clerk of Swansea (admitted 1926), and to Mr. A. G. NORRIS, Assistant Public Trustee (admitted 1913). A list of the honours of legal interest will appear next week.

Amendments to R.S.C.

THERE are no changes of major importance to be found in the R.S.C. (No. 1), 1952 (S.I. 1952 No. 1062 (L.6)), which came into force on 4th June. Order 37, r. 34A, is amended by the deletion of the words " or in an action to be tried at assizes," thus leaving subpœnas issued from the Crown Office as the only subpœnas excepted from the general rule that such documents remain in force until trial. Paragraph (*c*) of Ord. 66, r. 7, is altered to enable a party furnishing printed copies of documents to recover payment from the other party at the rate of 2½d. per folio instead of 2d. as hitherto, while Fees 106 and 107 in App. N (maximum amounts per folio which may be allowed on taxation for printing pleadings, etc.) are raised from 3s. 8d. to 4s. 1½d. and from 2½d. to 3d. respectively. Other amendments affect Ord. 62, r. 2 (3) and (7), and Ord. 66, r. 3 (6), while r. 2 of the R.S.C. (No. 2), 1943, is revoked.

Descending into the Arena

" THE judge does appear to have intervened more often than was desirable and does seem to have left counsel labouring under a sense of grievance and the feeling that the conduct of the case had been taken out of his hands and assumed by the judge. It is undesirable that a judge should give the impression that he is not allowing counsel to conduct the case in the way which seems best to him." The quotation is from a judgment by JENKINS, L.J., in a case in the Court of Appeal on 29th May, in which the court held that notwithstanding the interventions by the judge in a High Court action the court would not interfere, as no injustice had in fact been done. Our Bench is still the best in the world, but it is unfortunately true that judges and magistrates more frequently depart from the rule of respect for the functions of advocates than advocates depart from that of respect for the Bench. It should be said openly whenever the need arises that the function of counsel and solicitors in court is equally important with that of the judge, and that they should enjoy the same freedom from undue interference. Counsel and solicitors are

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the mouthpieces of those whose rights are in question, and wrongful interference with them while acting in the course of their duties is an injury to the cause of freedom.

Court-Martial Appeal: Leave to Appellant to Attend

IN dismissing an appeal from a murder conviction by a court-martial the court constituted under the Courts-Martial Appeals Act, 1951, sitting for the first time, had this to say on the right of the appellant to be present at his appeal. "The right is . . . different from that of a person appealing in civil life, for the appellant can only be present if the court gives its leave. It would be very undesirable, especially in the case of people serving abroad, to hold up proceedings in order to bring an appellant to this country. The court has no power under the Act of 1951 to deal with sentence—a respect in which it differs from the Court of Criminal Appeal—so that it will normally be considering only questions of law, or possibly mixed law and fact. The court will in those circumstances give leave only if it is satisfied that the presence of the appellant will be useful and will serve the ends of justice, and not otherwise. Indeed, in the experience of the court, no useful purpose is served by the presence of the appellant in the vast majority of cases which come before the Court of Criminal Appeal, except perhaps in appeals from sentence when the court might decide to alter a sentence to probation and so on. But on the whole it is a matter for regret that prison officers, who already have too much to do, should have the additional burden of having to bring prisoners up to be present at their appeals when no useful purpose can be served thereby." The court was constituted by the LORD CHIEF JUSTICE and HILBERY and DEVLIN, L.JJ.

Teaching Law

FROM Oxford comes news of a new method of teaching law, evolved by amalgamation of the best features of the case-book system used in the United States with those of the text-book system. This method, it appears, will be inaugurated at Christ Church next year. Mr. S. N. GRANT-BAILEY, law tutor at Christ Church, will use the system in his lectures, and, as Dean of the Faculty of Law at Southampton University, will direct studies there by what is described as a modernistic approach to the teaching of law. Instruction by text-books alone is imperfect according to Mr. Grant-Bailey. The method of teaching by case-book employed in the United States is imperfect in that the student comes to regard cases as being isolated entities instead of part and parcel of the fabric of law. It is indefensible, he adds, that law and equity should be administered in separate divisions of the High Court, and that practitioners should be segregated into two separate fields. There ought to be one court administering the completely fused principles of law and equity. The case-book to be used at Oxford and Southampton is being prepared by a committee of lawyers. Under the new system the lecturer will, in place of the orthodox lecture, prepare a small number of cases to be discussed by him and the class. The outcome of the experiment will be awaited with interest. Experience in teaching proves that results are the final test. Great lawyers and judges have been trained under the old text-book and lecture system, and have culled their practical training in the laboratory of life. It will be a generation before any real test of the results will be possible, but in the meantime we wish this brave experiment every possible success.

COMPULSORY PURCHASE BY THE CENTRAL LAND BOARD

THE Central Land Board have in the last year secured some notable victories in the interpretation of their powers of compulsory acquisition of land. The most important decision was that of the House of Lords, delivered on the 25th February last, in *Earl Fitzwilliam's Wentworth Estates Co., Ltd.* v. *Minister of Town and Country Planning* (1952), 96 SOL. J. 193. While the *Fitzwilliam* case was on its way to the House of Lords came the decision of Devlin, J., on the 23rd July, 1951, in *Travis* v. *Minister of Local Government and Planning and Others* (1951), 95 SOL. J. 596. Lastly, on the 29th April, 1952, comes the decision of Parker, J., in *Hanily* v. *Minister of Local Government and Planning and Another* [1952] 1 T.L.R. 1304; 96 SOL. J. 328.

All three cases turn on the wording of s. 43 (1) of the Town and Country Planning Act, 1947, which provides that the Board may, with the approval of the Minister, by agreement "acquire land for any purpose connected with the performance of their functions under the following provisions of this Act, and in particular may so acquire any land for the purpose of disposing of it for development for which permission has been granted under Part III of this Act on terms inclusive of any development charge payable under those provisions in respect of that development." Section 43 (2) gives the Board a power of compulsory purchase for the purposes of s. 43 (1). The only functions of the Board "under the following provisions of this Act" are those in Pt. VI relating to the ascertainment of development values on claims against the £300m. fund and in Pt. VII relating to the collection of development charge. They are given no function of promoting the development of land or of ensuring that it shall not be sold above existing use value.

In the *Fitzwilliam* case the company were offering to grant a building lease for 300 years at a ground rent of £20 10s. a year, the company's claim on the £300m. fund to be assigned to the lessee. The ground rent clearly had regard to the development value of the land, and the prospective lessee asked the Board to intervene. When approached by the Board the company would not accept less than £462 for the freehold, although the district valuer estimated the existing use value to be about £35.

In *Travis's* case Travis had offered to sell to one Lomax a plot of land for £192; the existing use value was estimated by the Board at £30. When the district valuer, on behalf of the Board, tried to negotiate, Travis's agents wrote that he had decided to withdraw his whole estate from sale.

In each of the two cases the Board made a compulsory purchase order which was confirmed by the Minister.

In *Hanily's* case Miss Hanily offered about ·21 of an acre of land on which stood eight cottages, either condemned or partly demolished and condemned, for sale to a firm known as Blanchard Brothers at a price between £2,100 and £2,300. Blanchards were not prepared to pay more than £400 or £450 for it and approached the Board. On the 28th April, 1950, a Mr. Terry offered Miss Hanily £1,750 for the site. She accepted the offer. On the 16th July, 1950, the Board made

a compulsory purchase order which was subsequently confirmed by the Minister.

Each case, therefore, goes a step further than the preceding one. In *Fitzwilliam* the land remained on offer at all material times; in *Travis* the land was taken off the market when the Board tried to negotiate; in *Hanily* the land had not only come off the market but had, in fact, been sold to another party before the Board made their order.

In each case an application was made pursuant to para. 15 of Sched. I to the Acquisition of Land (Authorisation Procedure) Act, 1946, to quash the order and in each case the application failed.

In the *Fitzwilliam* case it was contended, among other things, by the applicants that the Board had acted *ultra vires* in that they had made their order for the purpose of enforcing a policy that land should be sold at existing use value when there was nothing in the Act to prohibit sales above existing use value, and for the purpose, as stated in the Board's well-known pamphlet House 1, of preventing development from being hindered or stopped, although the planning of development was a matter for the local planning authority, the Board's functions being merely financial.

Birkett, J., as he then was, in the court of first instance, held that the second limb of s. 43 (1), commencing with the words " and in particular ", gave the Board a power separate from and independent of the first limb and that consequently the Board need not be acting in pursuance of their functions of assessing and collecting development charges or fixing development values. While he did not think that the power could be used for the sole purpose of enforcing any policy of the Board that sales should not take place above existing use value, the evidence did not disclose that this was the sole purpose. He held the order to be valid. The Court of Appeal (Denning, L.J., dissenting) held that the second limb of s. 43 (1) did not give an independent power but was merely interpretative of the first limb, but the making of the order was, in fact, in this case in connection with the functions of the Board in operating the development charge scheme, the working of which would undoubtedly be impeded by sales above existing use value. The court held that the policy of enforcing sales at existing use value was not unrelated to the Board's functions in connection with development charge.

The House of Lords adopted the same construction of s. 43 (1) as the Court of Appeal and held that the Board were acting in pursuance of their functions as assessors and collectors of development charge. The policy of the Board to prevent sales above existing use value seems to receive final sanction from the following sentences from the judgments of Lord Oaksey and Lord Tucker respectively :—

> " It is true that there is nothing in the Act to prohibit sales at such values [i.e., above existing use values], but the express power to acquire land compulsorily for which permission to develop has been granted is inconsistent with a right by the landowner to sell at all in the particular class of cases dealt with."
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> " The declared policy of the Board to discourage—by compulsory purchase if necessary—sales of land at prices in excess of existing use value seems to me to be one which the Act has empowered them to carry out by conferring on them this power to acquire land . . . "

The application by Travis came before Devlin, J., after the decision by the Court of Appeal in the *Fitzwilliam* case, and his counsel had to concede that the Board might properly exercise their powers to prevent sales above existing use value. He sought, however, to contend that that power was a negative one and could not be used for the positive purpose of promoting the development of land as in the present case where they were seeking to acquire land withdrawn from the market. Devlin, J., considered that, if the Board had power to intervene in the first instance, it would be unreasonable to say that their power was automatically taken away merely because the offer to sell was withdrawn, and he held the order to be valid.

In *Hanily's* case the applicant contended that the order was bad because the Board made it not for the purpose of the functions of the Board or for the purpose of bringing land into development, but for the purpose of preferring one approved development of land to another, that the power conferred by s. 43 could only be used if development were threatened to be delayed, and that, where one or more developers were willing to pay the price demanded by the owner and in addition to pay the development charge, the power could not be exercised. Parker, J., held that the result of the *Fitzwilliam* case was to enable the Board to prevent sales at more than existing use value, which had in fact happened here, and he dismissed the application.

While the Board are now secured in law, it must surely be clear that their efforts have signally failed to produce a market in land at existing use value. Fear of a visitation from the Board has no doubt driven much land off the market altogether to await better times, although it is badly wanted for development, while most of the land which has remained in the market, apart from the special cases of dead-ripe and near-ripe land, has probably changed hands at well above existing use value.

According to the Board's report for the financial year 1950–51, only twenty-five compulsory purchase orders had been made by the Board since they first exercised their powers in March, 1949, though they also stated that not infrequently their intervention resulted in sales by agreement at existing use value. If the Board's policy of enforcing sales at existing use value was to be made really effective, they would have had to make vastly more orders and the machinery would have had to be worked quickly. But compulsory purchase is a disagreeable proceeding and no doubt the Board's hands have been tied by the doubts as to the extent of their powers which have only so recently been resolved. The resolution of these doubts now will probably have little effect on the market because the promise of forthcoming legislation to amend the financial provisions of the 1947 Act has introduced fresh uncertainties, making vendors still less anxious to sell at existing use value. It seems unlikely that in face of such proposed fresh legislation the Board will increase their compulsory purchase activities now that their legal powers have been made clear.

If a client desires to purchase a piece of land at existing use value, he may find it better to apply to his local authority than to the Board. In their report mentioned above, the Board drew attention to the fact that local housing authorities had power under s. 73 of the Housing Act, 1936, to acquire land at existing use value for resale to private developers. Many authorities are proceeding to exercise this power. They will, of course, not ordinarily be concerned with buying a single plot of land for resale, but rather they will purchase a substantial area, lay out roads and services and then sell off plots.

In short, the recent decisions on the Board's powers should not, in the writer's opinion, unduly worry owners of land on the one hand nor raise undue hopes in the minds of prospective purchasers on the other.

R. N. D. H.

A Conveyancer's Diary

ENFORCEABILITY AS A CHARACTERISTIC OF A VALID TRUST

IT is a maxim of the law of trusts that there must be somebody in whose favour the trust can be executed. Sir William Grant, M.R., expressed this essential characteristic a century and a half ago when he said that " there must be somebody in whose favour the court can decree performance " (*Morice* v. *Bishop of Durham* (1804), 9 Ves. 399, at p. 405) ; and most of the definitions of a trust which have been attempted incorporate, if they do not revolve round, this requirement. In the case of an ordinary private trust in favour of individuals, the place of the somebody in whose favour the trust will be enforced is filled by the individual beneficiary ; in the case of a charitable trust, for historical reasons which it would be far too late even to attempt to challenge to-day, this place is filled by the Attorney-General acting for the Sovereign as *parens patriæ*. But between the express private trust for individuals and the public charitable trust there is to be found another kind of trust, the trust for a non-charitable purpose, which it has always been extremely difficult to fit into any systematic exposition of the law of trusts. It is one of the great merits of the recent decision in *Re Astor's Settlement Trusts* (reported at p. 246, *ante*) that it helps to " place " these anomalous trusts.

The motive which led Lord Astor and his son, Mr. David Astor, to make the settlement the effect of which was questioned in this case does not appear from any of the reports of this decision, since it was irrelevant to the questions which were argued, but reports in the newspapers made it clear. The settlors were the owners of almost all the issued share capital of the company which owns the *Observer* newspaper, and the object of the settlement was to prevent the dispersion of these shares—otherwise almost inevitable in the present conditions of high taxation—and the possibility of the financial control of the newspaper passing into the hands of persons who would be tempted to change its present policy, which is that of independence on strictly non-party lines. With this object the settlors transferred all their shares in this company to trustees on trust that the income of the trust funds should be applied, during a specified period, for such of a number of specified purposes as the settlors should direct or, in default of such direction, the trustees should select. The specified period for this trust was a period defined so as just not to infringe the rule against perpetuities, and at the end of the specified period the trust premises were to be held, as to both capital and income, on certain other trusts not material to the problem with which this article is concerned. The specified purposes were set out at considerable length in a schedule to the settlement, and it is unnecessary to do more than to refer to some of them. They included the improvement of international relations, the preservation of the independence of newspapers, and the establishment and support of benevolent schemes for the relief of persons engaged in journalism and their families.

The trusts of income during the specified period were thus clearly not for the benefit of individual beneficiaries, and it was admitted (as indeed was equally clear) that these trusts were not charitable trusts. They were trusts for non-charitable " purposes," and it was argued that they were void on either of two grounds—first, because they were not trusts for individuals, and secondly, because they were void for uncertainty. Roxburgh, J., held that the trusts were void on both these grounds, but it is in the first of them that we are immediately interested.

Counsel who argued the case for the validity of these trusts relied on a number of cases which, at first sight, at any rate, run counter to the proposition that a trust to be valid must either be for the benefit of individuals, or fall within the class of charitable trusts. The first of these cases was *Pettingall* v. *Pettingall* (1842), 11 L.J. Ch. 176, where a testator bequeathed £50 per annum to be paid for the keep, during her life, of a favourite mare, and directed that his executor should consider himself in honour bound to fulfil his wish. In the proceedings which followed it was admitted that a bequest in favour of an animal was valid, and the purpose of the application to the court was to settle the form of the decree and the disposition of the surplus of the £50 per annum not required for the maintenance of the mare. The order of the court was that so much of the £50 as would be required to keep the mare comfortably should be applied by the executor and that he was entitled to the surplus ; and if the mare was not properly looked after, any of the persons interested in the testator's residuary estate might apply to the court. This case was followed in *Re Thompson* [1934] 1 Ch. 342, where a testator bequeathed £1,000 to a friend to be applied by him in such manner as he should think fit for the furtherance of foxhunting, and gave the residue of his estate to one of the colleges in the University of Cambridge. The testator's executors applied to the court to ascertain whether this bequest of £1,000 was valid or not, but Clauson, J., thought that the proper way to deal with the matter would be, not to make a declaration in general terms as to the validity or otherwise of this bequest, but to follow the example set in *Pettingall* v. *Pettingall* and order that, upon the friend giving an undertaking to apply the £1,000 towards the furtherance of foxhunting, the executors should pay him that sum, and in case the legacy should be applied by him otherwise than towards the furtherance of foxhunting, the residuary legatee was to be at liberty to apply.

In regard to *Pettingall* v. *Pettingall*, Roxburgh, J., observed that it was admitted in that case that a bequest in favour of an animal was valid, and that there were persons who, having regard to the terms of the decree which was made, would have had no difficulty in getting the terms of the " bequest " enforced. In regard to *Re Thompson*, the learned judge similarly observed that there was somebody who could enforce the purpose of the bequest because the college, as residuary legatees, would be entitled to the legacy but for the trust for its application, and they could apply to the court in the event of its misapplication.

On the other side stand two passages from the opinion of Lord Parker in *Bowman* v. *Secular Society, Ltd.* [1917] A.C. 406, from which it appears (*a*) that a trust may be void for any one of a number of reasons, one of which is that the trust is unenforceable, and (*b*) that a trust to be valid must be either for the benefit of individuals or for the benefit of the public—that is, in the latter case, a charitable trust. Telescoping these two passages together, one can see that a trust for a " purpose " such as that in *Re Astor's Settlement Trusts* is, regarded by itself, invalid because it is unenforceable, and unenforceable because there is nobody to enforce it, and that the trusts for " purposes " in *Pettingall* v. *Pettingall* and *Re Thompson*

would have been open to the same objection if there had been nobody in those cases who could have applied to the court for the execution of the trust if the person to whom the trust was specifically committed defaulted in his fiduciary obligation.

Pettingall v. *Pettingall* and *Re Thompson* were not the only cases relied upon as supporting the argument that a trust for a purpose may be *per se* valid. There were a number of tombs cases cited, i.e., cases in which sums of money were left by testators for the upkeep of tombs and sepulchral monuments; but all except, perhaps, one, could be explained in the way that these two named cases were explained. Roxburgh, J., summed up the position in this way: on the one side there were Lord Parker's two propositions; on the other side a group of cases relating to horses and dogs, graves and monuments—matters arising under wills and intimately connected with the deceased—" in which the courts have found means of escape from these general propositions . . . [these cases] may properly be regarded as anomalous and exceptional and in no way destructive of the proposition which traces descent from or through Sir William Grant through Lord Parker . . . Perhaps the late Sir Arthur Underhill was right in suggesting that they may be concessions to human weakness or sentiment . . . They cannot, in my judgment, of themselves . . . justify the conclusion that a court of equity will recognise as an equitable obligation, affecting the income of large funds in the hands of trustees, a direction to apply it in furtherance of enumerated non-charitable purposes in a manner which no court or department can control or enforce." On this view, the trusts in this case were void on the ground that they were not trusts for the benefit of individuals.

This decision does not afford a complete explanation of the cases in which trusts which are neither for the benefit of individuals nor charitable trusts—the tomb and animal cases—have been upheld; it is probably beyond the wit of man to do so, and a frank recognition that these cases are anomalous is, from the practical point of view, much to be welcomed. From that point of view it is, also, clear that if the present decision is followed a simple test for the validity of these trusts can be uniformly imposed: their validity will depend on their enforceability. It is thus possible to end this examination of this most interesting case with a statement of certain propositions which, I think, may justifiably be drawn from the judgment of Roxburgh, J., and the earlier cases which he there considered:—

(1) A trust otherwise than for the benefit of an individual or the public, i.e., for a non-charitable " purpose " such as the furtherance of foxhunting, may validly be created if there is a gift over of the trust premises to an individual or body.

(2) Such a gift over may be either express or implied—an example of an implied gift over being a residuary gift.

(3) To be valid, such a gift over must operate within the bounds set by the rule against perpetuities. Whether the exceptional rule that a gift over from one charity to another may be allowed to operate at any time without reference to the rule against perpetuities would also be available in the case of a gift over to a charity taking effect on the default of a trustee holding trust premises for a " purpose " is an arguable point; but it would seem that the gift over of such premises implied by the existence of a residuary gift may take effect at any time (see the note on *Re Chardon* [1928] Ch. 464 in the appendix to Tudor on Charities, 5th ed., p. 701).

(4) Within the limits set by the rule against perpetuities, a trust *inter vivos* such as that in *Re Astor's Settlement Trusts* can, apparently, be created for the benefit of " purposes " if care is taken to subject the primary trust to a gift over in favour of an individual or body (whether charitable or non-charitable).

(5) A similar trust may be created by will, if the will contains a residuary gift, without the necessity of an express gift over of the trust premises on default of the trustee to apply them for the specified " purposes," and in the case of a trust so created it is, apparently, unnecessary to confine the operation of the trust for the specified " purposes " within the limits allowed by the rule against perpetuities.

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Landlord and Tenant Notebook

EXCLUSIVE POSSESSION CONSISTENT WITH MERE LICENCE

WHILE the " Notebook " discussed this question fairly recently, namely on 2nd February last (96 SOL. J. 67), in an article entitled " Permissive but Exclusive Occupation," dealing with *Errington* v. *Errington* [1952] 1 T.L.R. 231, the decision in *Cobb* v. *Lane* [1952] 1 T.L.R. 1037; 96 Sol J. 295 makes further discussion desirable. *Errington* v *Errington* and other modern authorities, I suggested in the article referred to, would make revision of the first chapters of our standard text-books essential when their next editions appear; and now, in *Cobb* v. *Lane*, the Court of Appeal has declared that *Lynes* v. *Snaith* [1899] 1 Q.B. 486 (which current editions of text-books correctly include among authorities) is no longer good law.

The facts of *Cobb* v. *Lane* were that the defendant had occupied, since 7th May, 1936, a leasehold house which was being bought by his sister. The circumstances surrounding the purchase were these: the defendant, a man with an eight-year-old daughter, had expressed his wish to buy a house in December, 1935, so expressing it to his mother in the presence of his sister. The defendant's mother then suggested the purchase of a house as a " nest-egg " for her above-mentioned granddaughter. The sister signed the contract on 1st May, 1936; the defendant took possession on 7th May, as mentioned; the sister completed on 24th June, 1936. During the first year of his occupation the defendant paid the rates, but after that his sister paid them. She died on 28th November, 1950. The plaintiffs, her executors, claimed possession. The defendant pleaded (*a*) that the deceased had held the house in trust for his daughter; (*b*) alternatively, that he had occupied it as tenant at will and had thus acquired a " squatter's title " under the Limitation Act, 1939, ss. 4 (3), 9 (1) and 16. The county court judge held that there was no evidence of any trust, and that the defendant had occupied as licensee. The appeal concerned the second point. Romer, L.J., observed that, as on 7th May, 1936, the deceased's title was not complete, she could not have then created a tenancy at will; but the decision actually turned on the question whether exclusive

possession had conclusively evidenced a tenancy or whether the defendant had occupied as licensee.

In *Lynes* v. *Snaith, supra*, one John Snaith had, in April, 1884, given verbal permission to his daughter-in-law to live in one of eleven cottages which he owned, rent free. He died in July, 1897, leaving this cottage to the plaintiff for life. Down to his death the testator had paid water rate, insurance and property tax on the cottage and the other cottages. He had once carried out repairs, and once refused to do repairs to an oven (" as she lived rent free, she might do them herself," he told his employee who conveyed the request). The defendant paid the poor rate. Argument centred much around the effect of the entry to do repairs, which was held not to signify a determination of will, and it was held simply that exclusive possession was *wholly inconsistent* with a mere licence, and the statement that the defendant lived in the house rent free showed that the deceased had intended to regard her occupation as that of a tenant. She had therefore acquired a freehold title.

I think that the change that has occurred is tersely indicated in Somervell, L.J.'s judgment in *Cobb* v. *Lane*, where he says: " Certainly under the old cases (and I doubt if this has been much affected by modern authorities), *if all one finds* is that somebody has been in occupation for an indefinite period with *no special evidence* of how he got there or of any arrangement being made when he went into occupation, it may be that the court will find a tenancy at will. I am assuming that there is no document or clear evidence as to terms. The modern cases establish that, if there is evidence of the circumstances in which the person claiming to be a tenant at will went into occupation, those *circumstances must be considered* in deciding what *the intention of the parties* was." This passage is welcome as a statement of the change in the law, in spite of the somewhat disappointing " it may be . . ." and the fact that the application of the principle has not been limited to cases in which a tenancy at will has been claimed; in *Marcroft Wagons, Ltd.* v. *Smith* [1951] 2 K.B. 496 the defendant asserted that she was a weekly tenant; as the tenancy was controlled, and the plaintiffs would have been liable for repairs under the Housing Act and Public Health Act, both of 1936, it may well be that she would have been as well off as she would have been if she had established a " squatter's title " to the freehold. Incidentally, both lords justices suggest that rent control legislation may partly account for the change.

Circumstances must be considered in deciding what the intention was; this is helpful, but we still want a statement showing what intention will create a tenancy, and what intention will create a mere licence. Here a passage in Denning, L.J.'s judgment in the same case takes us further: " The question in all these cases is one of intention: Did the circumstances and the conduct of the parties show that all that was intended was that the occupier should have a *personal privilege with no interest in the land?*" This certainly gives us a good idea of the essential nature of what we have to look for.

A commentator in the current issue of the *Modern Law Review*, dealing with *Errington* v. *Errington, supra*, suggests—not altogether seriously, I concede—that that decision might well cause great jubilation among sorely tried landlords, who would, in effect, decide to let no more, but merely to licence, and thus sidestep troublesome legislation. In my own above-referred-to observations on *Errington* v. *Errington* I ventured the opinion that in all the modern authorities concerned there was an element of " I'm doing this for you, though I wouldn't be doing it for anyone else," and that a grant conferring the right of exclusive possession was not to be regarded as a grant of a tenancy if the circumstances were such that neither party could have contemplated that the grantee's interests should be assignable. Somervell, L.J.'s recognition of the fact that in the absence of " special evidence " the old cases hold good and Denning, L.J.'s happy use of the expression " personal privilege with no interest in the land " (a tenant has, as the Law of Property Act, 1925, s. 1 (1) (*b*), states, an estate in land described as a " term of years absolute ") further, if they do not completely, define the position. For the defendant in *Lynes* v. *Snaith* would, if special evidence of how she got there had been examined, have been shown to have got there because she was a daughter-in-law on whom the grantor meant to confer a personal privilege, not an interest in the cottage; much the same would have applied to the gamekeeper's widow who had been the successful defendant in an unreported case mentioned in Channell, J.'s judgment, she having been allowed to reside in his cottage rent free after his death. " Personal privilege with no interest in the land " can fairly describe the effect of the intentions of the parties in a variety of circumstances, illustrated by the decisions mentioned in my previous article; *Cobb* v. *Lane* and the unreported case of *Gorham (Contractors), Ltd.* v. *Field* (1952), cited by Denning, L.J., in his judgment, show that, when the parties are related or have been master and servant, the evidence of intention is likely to be considered strong. Where there is, however, no such evidence, the fact that a document uses language appropriate to a licence, avoiding such terms as " landlord," " tenant," " rent," etc., will not of course avail the grantor if it is evident that in substance the intention was to create a tenancy and not a personal privilege (*Glenwood Lumber Co.* v. *Phillips* [1904] A.C. 405).

R. B.

HERE AND THERE

UPS AND DOWNS

BEFORE all interest is lost in what now appears to be the wholly abstract and theoretical problem whether a High Court judge can return at will to practice at the Bar or whether he must perforce perish where he sits (if necessary) of famine and financial anxiety, it is worth recalling a modern instance of a " snakes and ladders " career which, so far as we know, has no parallel, even in Ireland with its genius for the unexpected. In 1894 at the age of twenty-two James O'Connor was admitted a solicitor and for a while practised first at Gorey in his native County Wexford and later in Dublin. In 1900, however, switching over to the other branch of the profession, he was called to the Irish Bar and by 1908 he was able to take silk. The war years and " the troubles " brought him rapid promotion. In 1914 he became Solicitor-General for Ireland and in 1917 Attorney-General. In April, 1918, he was raised to the Bench as a judge of the Chancery Division, and in November he was promoted to the Court of Appeal, where he was to serve for six years. So far so good. There came the Treaty and the emergence of the Irish Free State and in changed circumstances James O'Connor felt inclined for a change. He resigned his office in 1924, migrated to London and in 1925, without more ado, was called to the English Bar by the Middle Temple, appointed one of His Majesty's Counsel learned in the law and knighted—all that in one year. He then took chambers at No. 3 Hare Court. That in itself was quite remarkable enough, but what one can only call an inverted climax was yet to come, for in

1929 he turned back to his first beginnings, requested to be disbarred and dispatented, returned to Ireland and proceeded to puzzle the professional authorities there by applying to be readmitted a solicitor. They solved the problem by the compromise of granting his petition on condition that he should not exercise any right of personal audience in the courts. Even now he did not settle down but divided his time between London and Dublin, and it was at Dulwich Village that he died on 29th December, 1931, in his sixtieth year.

KIDNAPPING INCIDENT

WHILE we're in Ireland we may as well make an excuse of one of the points in the Bar Council's memorandum to the matrimonial commission to recall a Victorian episode which age cannot wither and custom hasn't yet staled. The memorandum recommends stiffer regulations at ports and airfields to prevent husband or wife kidnapping children under the jurisdiction of the court. The deeply-felt religious divisions in Ireland have often led to a good deal of highly conscientious kidnapping there and once upon a time a certain Miss A, a firm Protestant, found herself in trouble with the courts for having spirited away and concealed the child of her Roman Catholic brother-in-law. In vain the Queen's Bench judges commanded her to produce it and finally she was committed to prison for six months without hard labour. Now, by a clerical slip the committal order was addressed to the Governor of Mountjoy Prison, a gaol exclusively for men, and consequently when she arrived in front of the great gates adorned with the adjuration "Cease to do evil and learn to do well," she was refused admittance. She passed the night in the sheriff's own house and next day she was brought into court again on an application to amend the order. The incident inspired one of the silks there present (or, as others say, one of the Dublin magistrates) to the following commentary:—

"In most earthly tribunals some hardship prevails,
But the Court of Queen's Bench is both prudent and mild.
It committed Miss A to a prison for males
As the very best way of producing a child.
How she'll do it, it passes conception to tell
If she cease to do evil and learn to do well,
But if in six months without labour confined
She produces a child 'twill astonish mankind."

TROPHIES AND MEMENTOES

THE thing that stands solidly between an apprehensive humanity and the nightmare of featureless boredom implicit in an entirely functionalised world is man's incurable instinct for hoarding, which gives every household and every institution with a local habitation and a name its inevitable deposit of miscellaneous personal relics. To the unsympathetic eye of spring cleaners and social reformers they are mere clutter and junk, but to the hoarder they are the fibrous roots that nourish his being. Tear them up and he shrieks like the fabled mandrake. It is true of the drawers full of old matchboxes and theatre programmes, army buttons, bits of ribbon, pipes, penknives, hotel bills, travel folders, dogs' teeth, children's hair and what have you. It is true of the stuffed fish, mounted heads, old sporting guns and entrenching tools that bear witness to the same instinct. It is true likewise of the horseshoes at Oakham, of John of Gaunt's horseshoe at Lancaster, of Queen Elizabeth's hat at Hatfield, of the Duke of Suffolk's head at Aldgate and of Whitaker Wright's socks which an attendant at the Law Courts used to display to privileged visitors. It is true of the sample of manna from the desert and of the firkin from the marriage feast of Cana treasured in the Cathedral at Oviedo. It is true (we tremble to tread on such sacred ground) of that holy house so reverentially preserved in his native Georgia, the birthplace of Marshal Stalin. Well, the law too has its hoarding mania and the legal quarter of London is as tightly packed with relics as any other. The latest addition to the curiosities of the law has lately been solemnly presented to Sir Walter Monckton, Q.C., at a West End dinner given in his honour by the National Club Cricket Association. And what is it? Mounted on an oak plinth, it is the very ball which, violently propelled from the Cheetham Cricket Ground at Manchester on 9th August, 1947, struck down Mrs. Bessie Stone at her garden gate and never came to rest until 10th May, 1951, when it was finally fielded by Lord Porter *et alii* his noble and learned brethren in the House of Lords. See *Bolton* v. *Stone* (1951), 95 SOL. J. 333. Sir Walter represented the cricket club in the appeal and the ball is a memorial of his victory as vivid surely as were the skulls of their foes to the heroes of Valhalla.

RICHARD ROE.

BOOKS RECEIVED

Phipson on the Law of Evidence. Ninth Edition. By Sir ROLAND BURROWS, Q.C., Recorder of Cambridge. 1952. pp. clxxxv and (with Index) 758. London: Sweet & Maxwell, Ltd. £4 10s. net.

Guide to Income Tax. By N. E. MUSTOE, M.A., LL.B., Q.C. 1952. pp. xv and (with Index) 339. London: Butterworth and Co. (Publishers), Ltd. 31s. 6d. net.

Cripps' Compulsory Acquisition of Land. Release 6. Pages to be inserted. 1952. London: Stevens & Sons, Ltd.

Executors and Administrators. Fifth Edition. By N. E. MUSTOE, M.A., LL.B., Q.C., with Executorship Accounts by J. J. WALSH, A.A.C.C.A., Lecturer in Executorship Accounts at the Kennington Commercial College. 1952. pp. xliv and (with Index) 299. London: Butterworth & Co. (Publishers), Ltd. 27s. 6d. net.

Simon's Income Tax. Issue No. 14. Pages to be inserted in Vols. 4 and 5, and Service Volume. 1952. London: Butterworth & Co. (Publishers), Ltd.

Introduction to the Principles of Land Law. Third Edition. By A. D. HARGREAVES, M.A., LL.B., Solicitor, Barber Professor of Law in the University of Birmingham. 1952. pp. xvi and (with Index) 208. London: Sweet & Maxwell, Ltd. 25s. net.

Manual of German Law. Volume II (Private International Law, Civil Procedure, Criminal Law, Criminal Procedure). By E. J. COHN, G. MEYER and K. NEUMANN. 1952. pp. xv and 167. London: Her Majesty's Stationery Office, for the Foreign Office. 21s. net.

Motor Claims Cases. First Supplement to the Second Edition. By LEONARD BINGHAM, Solicitor of the Supreme Court. 1952. pp. xii, 97 and (Index) vi. London: Butterworth & Co. (Publishers), Ltd. 10s. 6d. net.

Rating Valuation Practice. Third Edition. By PHILIP R. BEAN, F.R.I.C.S., F.A.I., F.R.V.A., and ARTHUR LOCKWOOD, M.B.E., F.R.I.C.S., F.A.I., F.R.V.A. 1952. pp. xv and (with Index) 366. London: Stevens & Sons, Ltd. 35s. net.

The Principles of Income Taxation. By J. P. HANNAN, LL.D., and A. FARNSWORTH, LL.D., Ph.D. 1952. pp. lvi and (with Index) 582. London: Stevens & Sons, Ltd. £3 3s. net.

Company Accounting. By J. F. BATEMAN, B.Com., A.C.A. 1952. pp. xii and (with Index) 157. London: Stevens & Sons, Ltd. 30s. net.

The Law of Income Tax. Twelfth Edition. By E. M. KONSTAM, Q.C. 1952. pp. lxxxv, 441 and (Index) 82. London: Stevens & Sons, Ltd., and Sweet & Maxwell, Ltd. £4 10s. net.

The Law Relating to the Architect. By E. J. RIMMER, B.Sc., M.Eng., A.M.I.C.E., of Lincoln's Inn, Barrister-at-Law; with a chapter on The Registration and Professional Conduct of the Architect, by PEMBROKE WICKS, C.B.E., LL.B., of the Middle Temple, Barrister-at-Law, Registrar of the Architects' Registration Council. 1952. pp. xv and (with Index) 244. London: Stevens & Sons, Ltd. 35s. net.

Cockle's Cases and Statutes on Evidence. Eighth Edition. By LEWIS FREDERICK STURGE, of the Inner and Middle Temples, Barrister-at-Law. 1952. pp. lvii and (with Index) 546. London: Sweet & Maxwell, Ltd. 35s. net.

REVIEWS

Introduction to the Principles of Land Law. Third Edition. By A. D. HARGREAVES, M.A., LL.B., Solicitor, Barber Professor of Law in the University of Birmingham. 1952. London: Sweet and Maxwell, Ltd. 25s. net.

Although Professor Hargreaves' book is probably used most frequently by undergraduates it would provide an excellent introduction to the subject for any law student. It is a short book, but his careful choice of material enables the author to explain in considerable detail the reasons for the major rules of English land law. The result is that a student approaching the subject for the first time is introduced to novel rules and to complicated reasoning by as easy a path as is possible.

The success of the author in explaining the traditional principles of the subject is equalled, if not excelled, by his treatment of modern statute law. The effects of the Rent Restriction Acts, the Agricultural Holdings Act, 1948, and the Town and Country Planning Act, 1947, are explained and related not only to social and economic development but also to the fundamental rules of our land law. Consequently, a student who studies this book carefully will obtain a grasp of the general outline of modern statute law that will serve him well when he proceeds to study this and allied subjects in more detail, and will assist him when he is obliged to consider the practical consequences of the statutes. We have nothing but praise for the new material Professor Hargreaves has written for this edition.

The Stock Exchange Official Year Book, 1952. Vol. 1. Editor-in-Chief: Sir HEWITT SKINNER, Bt. 1952. London: Thomas Skinner & Co. (Publishers), Ltd. Two volumes, £7 net.

This year a change has been made in the division of the contents of the two volumes of this standard work of reference: the Financial Trusts, Land and Property and the Investment Trusts sections have been transferred to vol. 1, and vol. 2, which is to be published in September, will contain only the Commercial and Industrial and the Mines sections. Particulars of the Iron and Steel Corporation of Great Britain, with a table of compensation values of securities of companies taken over, have been added to the Public Board section, and notices of iron and steel companies now owned directly or indirectly by the Corporation appear in the Iron, Coal and Steel section. Many further compensation values of gas companies' securities which were not determined in time to appear in last year's edition are now included in the table at the end of the Gas section. Details of mortgage loans of the old gas companies which were not treated as securities under the Gas Act, 1948, but for which liability was assumed by the Area Boards, are shown in a classified list in the supplement to this volume.

NOTES OF CASES

COURT OF APPEAL

HUSBAND AND WIFE: DESERTION BY WIFE: OCCASIONAL MARITAL INTERCOURSE: *ANIMUS DESERENDI* UNINTERRUPTED

Perry *v.* Perry

Evershed, M.R., Jenkins and Hodson, L.JJ. 7th April, 1952

Appeal from Judge Emlyn-Jones, sitting as a divorce commissioner.

A husband petitioned for divorce on the ground of desertion; but on three occasions during the triennium, between December, 1949, and March, 1950, the parties had marital intercourse, and the wife gave birth to a child in December, 1950. The commissioner held that the wife had deserted the husband in 1944, and that her attitude had not been affected by the isolated acts of marital intercourse, but that from 1944 until the presentation of the petition her *animus deserendi* had continued. He felt bound, however, in view of the decision in *Viney* v. *Viney* [1951] P. 457, to hold that the desertion had been interrupted and dismissed the petition accordingly.

EVERSHED, M.R., in a reserved judgment, said that desertion as a ground for divorce differed from the statutory grounds of cruelty and adultery in that the offence which founded the cause of action was not complete until the petition was presented, and until then a deserted spouse could not refuse reinstatement. It was otherwise in the other cases, for once the offence had been committed, there was a right to a divorce. The husband had therefore submitted that the doctrine of condonation could not properly be applicable to the offence of desertion for three years immediately preceding the presentation of a petition. The Queen's Proctor had not relied upon condonation, but had submitted that sexual intercourse involved a resumption of the marital relationship which must necessarily terminate desertion. In his judgment condonation, which involved "forgiveness made effective by reinstatement," had no application to desertion. It was to be noted that s. 4 (2) (*b*) of the Matrimonial Causes Act, 1950, made no reference to the condoning of desertion. The question remained, however, whether one or two acts of marital intercourse put a stop to any preceding period of desertion by a wife. In his view the question whether cohabitation had or had not been resumed was one of fact and degree to be determined on commonsense principles. Sexual intercourse was undoubtedly a most important incident in the relationship between man and wife, but its significance must vary according to the circumstances, and he thought that the mutual intention of the spouses was in this matter essential. An absolute refusal of intercourse by a spouse who in other respects fulfilled the duties of marriage had been held not to amount to desertion in *Weatherley* v. *Weatherley* [1947] A.C. 628, and it followed that participation in acts of intercourse by a spouse who in other respects repudiated the marital relationship should not be regarded as necessarily constituting a resumption of such relationship. Mutual intention was the essence of the matter, as shown in *Mummery* v. *Mummery* [1942] P. 107 and *Bartram* v. *Bartram* [1950] P. 1. In his opinion the appeal should in the circumstances be allowed. His lordship in his judgment also criticised the undesirability of putting leading questions in an examination-in-chief; the questions in this suit (which was undefended) had been such as might fairly be said to have deprived the answers of any cogency.

JENKINS and HODSON, L.JJ., concurred. Appeal allowed.

APPEARANCES: *Richard Bingham* and *Sproule Bolton* (*Percy Hughes & Roberts*, Birkenhead); *Colin Duncan* (*Treasury Solicitor*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law.]

HUSBAND AND WIFE: MAINTENANCE: SECURITY ON HUSBAND'S ASSETS

Barker *v.* Barker

Evershed, M.R., Jenkins and Hodson, L.JJ.

7th April, 1952

Appeal from Collingwood, J., and Pearce, J., sitting as a judge in chambers.

In December, 1950, a wife obtained a decree of divorce on the ground of desertion. After decree *nisi* she applied for an order for maintenance and a secured provision. In May, 1951, Mr. Registrar Long ordered the husband to secure to the wife an annual sum of £300 less tax by monthly instalments until the child of the marriage attained the age of twenty-one, the annual sum to be then reduced to £200 less tax. He further ordered the husband to pay £400 a year less tax to the wife and £120 less tax for the child, by way of maintenance. Collingwood, J., dismissed an appeal, intimating that the husband's proper course was to apply to the registrar for any variation. The matter came before the registrar a second time, and he directed that the annual sum of £300 should be "secured by a general charge on all of" the husband's assets. Pearce, J., dismissed an appeal from this

order. The husband appealed on the ground that the form of security directed by the registrar was wrong in principle, and that the amount ordered to be secured was excessive.

JENKINS, L.J., delivering the judgment of the court, said that the form of security directed by the second order could not stand, for any order for maintenance to be secured by a general charge upon all the husband's assets would include even his clothes and personal effects, and any balance of salary which might be due to him. In view of the husband's means, the husband would be ordered to secure £100 a year by a charge on all the shares held by him in a certain company, but that income was to be paid only out of the income of the shares or any investments which might represent them.

APPEARANCES: *Beyfus*, Q.C., and *Stirling* (*Withers & Co.*); *Heathcote Williams*, Q.C., and *Emrys Roberts* (*Martin Baker*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law.]

EVIDENCE: LEGITIMACY: STATEMENTS BY DECEASED PARENTS

In re Jenion; Jenion *v.* Wynne

Evershed, M.R., Jenkins and Morris, L.JJ. 7th April, 1952

Appeal from the County Palatine Court of Lancaster.

RP, an intestate, married William Henry J in 1900 and lived with him for a number of years, until he left her after discovering that she was committing adultery with James R. After a time she and James R moved to Prospect Street, Liverpool, where she continued to live until she died intestate and a widow in 1949. At the time of the move James R began calling himself James J. Letters of administration were granted to the defendant, who was born in 1904 and claimed to be the sole legitimate child of the marriage. The plaintiffs, children of the intestate who claimed to be issue of the marriage, brought an action claiming to share in the estate. The eldest of these, James William J, was born in 1911, and his birth certificate showed his father as William Henry J. The others were born in 1914 or later, and their father was indicated as James J. The evidence included statements by N, a cousin of James R, that in 1920 James R had told him that he was the father of all the children except the defendant, statements by the intestate to the same effect, and evidence by the defendant of similar statements made in her hearing when she was a child. The vice-chancellor did not accept the defendant's evidence; he held that the statements attributed to the intestate were not admissible as evidence of the facts stated, and found that, on the evidence of N, William Henry J could have had no access to the intestate before the births of the plaintiffs, other than James William J. There was therefore no evidence to rebut the presumption of James William's legitimacy. The defendant appealed.

EVERSHED, M.R., said that the vice-chancellor had been wrong in holding as inadmissible the statements attributed to the intestate. They were, by s. 32 of the Matrimonial Causes Act, 1950, direct evidence of the facts stated; by that section evidence of spouses which negatived the possibility of marital intercourse was admissible in accordance with the ordinary rules of evidence. The intestate, while alive, was a competent witness as to the facts, and after her death her declarations became receivable. The declarations attributed to James R were admissible as part of the *res gestae*. There was thus admissible evidence that James William was not legitimate contained in the evidence of N and of the defendant sufficient to discharge the onus, and there would be a declaration that the defendant was the only lawful issue of the intestate.

JENKINS and MORRIS, L.JJ., agreed. Appeal allowed.

APPEARANCES: *Sir Lynn Ungoed-Thomas*, Q.C., and *J. Turner* (*Joseph Norton*, Liverpool); *Henry Salt*, Q.C., and *A. O. Hughes* (*G. J. Lynskey & Sons*, Liverpool).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

HIRE PURCHASE: RECOURSE AGREEMENT BETWEEN SELLER AND FINANCE COMPANY

Reliance Car Facilities, Ltd. *v.* Roding Motors

Singleton, Denning and Hodson, L.JJ. 30th April, 1952

Appeal from Sellers, J.

The defendants, motor dealers, arranged in October, 1948, with the plaintiffs, hire-purchase financiers, for the plaintiffs to buy a motor van from the defendants to be let on a hire-purchase agreement to third parties as hirers. The parties entered into a "recourse agreement" which was only to take effect "in the event of the termination of the hiring agreement," and provided that if the hirers defaulted the defendants were to repossess themselves of the van and buy it from the plaintiffs at a price equal to the unpaid instalments. The plaintiffs' agreement with the hirers provided that if the hirers made default on any monthly payment "the owner shall have the right . . . to declare the hiring terminated and to retake possession" of the van. The hirers paid one instalment only, in November, 1948. In July, 1949, the plaintiffs informed the defendants by letter that the hirers were in default, instructed them to repossess themselves of the van, and stated that they would send an invoice for the price due. A copy was not sent to the hirers. The defendants took no action, but complained to the plaintiffs that they had not acted with due diligence. On action brought for the price of the van, Sellers, J., held that the hiring agreement had been terminated, and gave judgment for the plaintiffs. The defendants appealed.

DENNING, L.J., said that the question was whether the letter from the plaintiffs to the defendants determined the hiring agreement, and so brought into force the recourse agreement. Sellers, J., had held himself bound by *North General Wagon and Finance Co., Ltd.* v. *Graham* [1950] 2 K.B. 7, but that case was distinguishable; it was a claim in conversion against an auctioneer who had sold a car fraudulently put up for sale by a hirer, and it was not there necessary for the plaintiffs' case that the hiring should have been terminated. In the present case, in order to terminate the hiring, there must be a declaration to that effect to the hirers, or conduct equivalent thereto. A breach by the hirers made the agreement voidable only. No notification had been made to the hirers, so that the recourse agreement was never brought into operation, and the action failed.

SINGLETON and HODSON, L.JJ., agreed. Appeal allowed.

APPEARANCES: *F. Harris* (*Albin Hunt & Stein*); *W. M. F. Hudson* (*J. H. Fellowes*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

FURTHER AND BETTER PARTICULARS OF *LOCUS IN QUO*: PARTICULARS TO BE GIVEN BY MARKS ON PLAN

Tarbox *v.* Metropolitan Borough of St. Pancras

Somervell, Jenkins and Morris, L.JJ. 5th May, 1952

Appeal from the judge in chambers.

The plaintiff sued the defendants for injuries arising out of the alleged negligence of one of the defendants' dustmen, who was said to have swept rubbish on the pavement in such a way as to cause the plaintiff to fall down. The defendants applied to the master for an order for further and better particulars as to the places where the plaintiff was walking, where the dustman was sweeping and where the plaintiff fell. The master ordered that the particulars should be given by marking the respective positions on a scale plan; this order was affirmed by the judge in chambers. The plaintiff appealed.

SOMERVELL L.J., said that when the court decided that particulars were necessary, it must have discretion to order them to be given in the most convenient form. For example, it might be complicated and unhelpful if the course of a right of way could only be specified in words, and much more convenient that it should be indicated on a plan. It could not be held that there was no jurisdiction to make such an order. It was for the master to consider when such a course was convenient, and to consider whether it might in any case be oppressive to a plaintiff. In the present case the order was eminently reasonable.

JENKINS and MORRIS, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *H. Vester* (*Chesham & Co.*); *Sir S. Worthington-Evans* (*William Charles Crocker*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

HUSBAND AND WIFE: CRUELTY: EVIDENCE AND CORROBORATION: DIRECTIONS TO JURY

Fromhold *v.* Fromhold

Singleton, Denning and Hodson, L.JJ. 13th May, 1952

Appeal from Wallington, J.

A wife, who had in her favour a justices' order on the ground of cruelty, presented a petition for divorce on that ground in November, 1950. A decree *nisi* was pronounced, but the husband was granted a re-hearing by the Court of Appeal on the ground that the commissioner had refused to hear him in the absence of

an answer. An application under r. 36 to the Divisional Court had previously been refused (see report of *Taylor* v. *Taylor* [1951] 2 T.L.R. 131, at pp. 133–134). The petition was heard before Wallington, J., and a jury, and dismissed. The wife appealed, submitting that Wallington, J., had misdirected the jury by saying that evidence by a friend of bruising was not admissible, because it was a complaint made some weeks after the alleged assault, that it was necessary to prove injury to health, even in a case of proved physical injury, and that the order of the justices was irrelevant. It was further submitted that a note from the jury to the judge after they had retired should have been disclosed to the parties.

SINGLETON, L.J., said that there was a distinction between complaints and evidence of fact and, if a petitioner relied upon blows as a charge of cruelty, she was entitled to call evidence of bruising. The wife had complained of certain assaults, and Wallington, J., had said that there was no evidence that any of these matters had affected the wife's state of health, and that it could not be said that a bruise or a black eye amounted to danger to life, limb or health. That proposition was unacceptable; it was open to a jury to find that kicks, cuts and blows, if proved, amounted to cruelty and most people would so regard them. The case would not have been carried further if the wife had said that they had affected her health. There had also been a misdirection upon the justices' order, which was a factor, though not a conclusive factor, to be taken into consideration, and which might in an undefended suit be taken as sufficient proof in view of the provisions of s. 7 (2) of the Matrimonial Causes Act, 1950. His lordship held further that, if there were a communication between judge and jury, the litigants and their counsel were *prima facie* entitled to see it.

DENNING, L.J., said that the friend's evidence of bruising corroborated the wife's story in a material particular, namely, the nature and extent of her injuries, though it did not implicate the husband, and was admissible. The statements made by the wife were not admissible for they were hearsay and, since they were made some time after the alleged assault, were not admissible as complaints.

HODSON, L.J., concurring, observed that the evidence of bruising did not necessarily implicate the husband; that must depend upon circumstances such as whether the parties were or were not living together.

Appeal allowed.

APPEARANCES: the husband in person; *J. E. S. Simon*, Q.C., and *L. I. Stranger-Jones* (*H. R. Hodder & Son*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law.]

QUEEN'S BENCH DIVISION

INJURY TO A WIFE: CLAIM BY HUSBAND FOR PARTIAL LOSS OF *CONSORTIUM*

Adams and Another *v.* Railway Executive

Donovan, J. 6th May, 1952

Action.

The plaintiffs were husband and wife. The wife was travelling in a train of the defendants which ran into the buffers at a terminus, whereby she suffered injuries as the result of which she changed from a cheerful and sociable woman into one who was weak, depressed and hysterical. Damages were claimed by the plaintiffs under various heads; the husband claimed in particular for the loss of the *consortium* of his wife, alleging that he had lost a good, active and useful companion and now had one who was depressed, inactive, and hysterical, with whom he could not enjoy married life, and who could attend to limited household duties only. Liability was admitted by the defendants.

DONOVAN, J., said that he must reject the claim for loss of *consortium*. To enable a plaintiff to recover such damages the loss of *consortium* must be entire, and he could not so hold on the facts of the case, although there might be cases in which the injuries of a wife were of so serious a nature that the husband might be said in reality to have lost her *consortium* even though living under the same roof. The plaintiffs were, however, entitled to recover on the other heads of claim. Judgment for the plaintiffs.

APPEARANCES: *F. H. Lawton* (*Cunliffe & Airy*); *Lord Hailsham* (*M. H. B. Gilmour*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

HUSBAND AND WIFE: MAINTENANCE ORDER: WHETHER WIFE "RESIDING WITH" HUSBAND

Curtin *v.* Curtin

Lord Goddard, C.J., Jones and Parker, JJ. 9th May, 1952

Case stated by Middlesex justices.

On 31st January, 1951, justices made a maintenance order in favour of a wife against her husband. On 9th May, the husband was £26 in arrear. Between those dates both lived in the same house, which was the wife's property. The husband shared a room with his brother, who was a lodger, and was looked after by his daughter. He had his own ration book and did not share the family food, except when he took some against the wife's wishes. The wife did not try to turn the husband out for fear that such a proceeding might constitute desertion. The Summary Jurisdiction (Separation and Maintenance) Act, 1925, provides by s. 1 (4): "No order . . . shall be enforceable and no liability shall accrue . . . whilst the married woman . . . resides with her husband, and any such order shall cease to have effect if for a period of three months after it is made the married woman continues to reside with her husband." On the hearing of an information against the husband for failure to make payments under the maintenance order, the justices held that s. 1 (4) did not apply when the husband continued to reside with the wife, and made an order for committal. The husband appealed.

LORD GODDARD, C.J., said that the justices had drawn too subtle a distinction: if a husband resided with his wife, then the wife resided with the husband. On the facts, the husband was living in the wife's house by her leave and licence. If the husband had been told to go, the case might have been different, as it would be difficult to say that a householder was residing with a trespasser. The words of s. 1 (4) must bear their ordinary meaning, as was held in *Evans* v. *Evans* [1948] 1 K.B. 175 and *Wheatley* v. *Wheatley* [1950] 1 K.B. 39: accordingly the maintenance order was ineffective and the order for committal wrong.

JONES and PARKER, JJ., agreed. Appeal allowed.

APPEARANCES: *L. I. Stranger-Jones* (*H. R. Hodder & Son*); *Charles Lawson* (*E. P. Hanney*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

HOUSING: LOCAL AUTHORITY: NOTICE TO QUIT NOT SIGNED BY CLERK

Becker *v.* Crosby Corporation

Lord Goddard, C.J., Jones and Parker, JJ. 9th May, 1952

Case stated by Lancashire justices.

The Housing Act, 1936, provides by s. 83 (1): "The general management, regulation, and control of houses provided by a local authority . . . shall be vested in and exercised by the authority . . ." By s. 156 (2), as amended: "Where a local authority, for the purpose of exercising their powers under any enactment relating to housing, require possession of any building . . . of which they are the owners . . . they may obtain possession thereof under the Small Tenements Recovery Act, 1838 . . . at any time after the tenancy of the occupier has expired, or has been determined." By s. 164 (2): "A notice, demand, or other written document proceeding from a local authority under this Act shall be signed by their clerk or his lawful deputy." The corporation, which required possession of a house, served on the tenant a notice to quit signed by S, the housing manager. The tenant not having complied, S applied to the justices for a warrant under the Act of 1838 as extended by the Act of 1936. The tenant contended that the notice to quit was bad, as it was not signed by the persons designated by s. 164 (2). The justices held that the notice was valid in law, and was not a "notice, demand, or other written document" within s. 164 (2). The tenant appealed.

LORD GODDARD, C.J., said that the corporation, in issuing a notice to quit, were exercising their powers under the Act of 1936: *Shelley* v. *London County Council* [1949] A.C. 56. It could not be said that the notice was not one "proceeding from a local authority under the Act"; the notice was not signed by the town clerk or his deputy, and so did not comply with s. 164 (2). Consequently, the tenancy had not been determined under s. 156 (2), and the Act of 1838 had no application.

JONES and PARKER, JJ., agreed. Appeal allowed.

APPEARANCES: *G. W. Guthrie Jones* (*Fortescue, Adshead and Guest*, for *J. W. Wall & Co.*, Liverpool); *G. D. Squibb* (*Lees & Co.*, for *Town Clerk*, Crosby).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY DIVISION

PROBATE: REVOCATION: NO EVIDENCE AS TO CONTENTS OF LATER WILL

In the Goods of Wyatt, deceased

Collingwood, J. 2nd April, 1952

Contested probate motion.

The deceased, a widow, died without known next-of-kin in December, 1950. During her lifetime she executed at least three testamentary documents: a will dated January, 1935, a codicil thereto dated April, 1937, and a further will dated November, 1937. The documents of 1935 and April, 1937, remained until after the death of the deceased in the National Provincial Bank, Wallington, Surrey; the document of November, 1937, was deposited in the bank on the day of execution but was withdrawn, again deposited, and finally withdrawn in May, 1939. Since that date the bank had no trace of it, and it could not be found after the deceased's death. No copy, draft or instructions were available, since the office of the solicitor concerned had been completely destroyed by enemy action; and the solicitor concerned was unable to recall that the deceased had expressed a wish to make provision for a certain charitable bequest. He stated that it was his practice to include a revocation clause in any draft will and described the various stages of preparing a will which he normally followed. He had, however, no recollection of any of these matters in relation to the will in question.

Collingwood, J., in a reserved judgment, distinguished *In the Estate of Hampshire, deceased* [1951] W.N. 174, in which, he thought, it was clear that Karminski, J., had evidence before him which "compelled" him to find that the missing will contained both a revocation clause and an effective disposition of the whole estate. The mere fact of making a subsequent testamentary document did not of itself effect a total revocation of an earlier will, unless that document expressly or impliedly revoked it; and if the second document were missing, there must be clear proof of its provisions if it were to be held to effect a revocation. His lordship referred to *Brown* v. *Brown* (1858), 8 E. & B. 876; *Wood* v. *Wood* (1867), L.R. 1 P. & D. 309; *Cutto* v. *Gilbert* (1854), 9 Moo. P.C. 131; *Hitchins* v. *Bassett* (1689), 3 Mod. 204, and *Goodright* v. *Harwood* (1773), 3 Wils. 497, and said that to find that the missing will contained a revocation clause involved in the present case an assumption that the solicitor had followed his usual procedure and also that the deceased had accepted his draft. Such assumption should not be made for to do so would be to substitute surmise for the stringent and conclusive oral evidence required by Dr. Lushington in *Cutto* v. *Gilbert, supra*. The earlier will and codicil were therefore entitled to probate.

Appearances: *J. A. Gibson* (*Chas. T. Odhams & Sons*); *Hon. Victor Russell* (*Treasury Solicitor*).

[Reported by John B. Gardner, Esq., Barrister-at-Law.]

HUSBAND AND WIFE: MAINTENANCE: NEGLECT TO MAINTAIN: COVENANT NOT TO SUE

Dowell *v.* Dowell

Lord Merriman, P., and Pearce, J. 25th April, 1952

Appeal from justices.

The parties entered into a maintenance agreement in December, 1949, by which the husband covenanted to pay the wife £2 a week for joint lives *dum casta*, and a further sum of 10s. a week for their child. The wife covenanted to support herself, etc., and further covenanted that, so long as the husband made the weekly payments punctually, she would not "commence or prosecute any proceedings against the husband in respect of maintenance of herself and her child." There was, however, a provision that she might pursue such remedy as she wished if the payments were not made. In 1951 the wife had to give up her employment for reasons of health, and her solicitors wrote to the husband in November, 1951, saying that, if he would not increase the payments, they would apply to the justices for an order. The husband failed to reply, a summons was issued, and the justices, after consideration of *Tulip* v. *Tulip* [1951] P. 378 and *Morton* v. *Morton* (1942), 58 T.L.R. 158, the evidential value of the deed, and the means of the parties, made an order of £3 a week for the wife and £1 a week for the child. They referred in their reasons to the fact that in *Tulip* v. *Tulip, supra*, there was no clause barring the wife from taking proceedings and to a submission that that case was therefore to be distinguished. The husband appealed.

Lord Merriman, P. (who said of the justices' reasons and the notes of evidence that he had seldom had the pleasure of reading better), said that, important though the facts of an agreement and punctual payments under an agreement might be, the court had an absolute and discretionary jurisdiction which was not to be bargained away.

Pearce, J., concurred. Appeal dismissed.

Appearances: *C. Besley* (*Sharpe, Pritchard & Co.*, for *Nicholls and Nicholls*, Exmouth); *P. M. Wright* (*A. Carter & Co.*, for *Dunn & Baker*, Exmouth).

[Reported by John B. Gardner, Esq., Barrister-at-Law.]

HUSBAND AND WIFE: NULLITY: CONSUMMATION

R. *v.* R. (otherwise F.)

Mr. Commissioner Bush James, Q.C. 9th April, 1952

A husband prayed for a decree of nullity on the ground of his own incapacity; the wife denied that the marriage had not been consummated, alleging that full penetration had been achieved. Evidence was accepted that while the husband achieved erection and normal penetration he was unable during sexual congress with his wife to ejaculate. He was, however, able to have normal relations with another woman.

Mr. Commissioner Bush James, Q.C., held that the marriage had been consummated. There was, he said, no direct authority upon the matter, but in view of the decisions and judgments in *Baxter* v. *Baxter* [1948] A.C. 274; *D.* v. *A.* (1845), 1 Rob. Ecc. 279; *L.* v. *L.* (1922), 38 T.L.R. 697; and *White* v. *White* [1948] P. 330, it was his opinion that erection and penetration were equivalent to consummation in the ecclesiastical view as interpreted in the light of modern authorities.

Appearances: *J. E. S. Simon*, Q.C., and *H. J. Phillimore* (*Corner & Co.*); *Vaughan*, Q.C., and *James Stirling* (*W. H. Mathews & Co.*).

[Reported by John B. Gardner, Esq., Barrister-at-Law.]

PROBATE: COSTS: COSTS TAXED AND PAID: SUBSEQUENT BILL

In the Estate of Segalov, deceased; Hyman & Teff *v.* Segalov

Wallington, J. 30th May, 1952

Summons adjourned into court for judgment.

The defendant was ordered to pay the costs of a probate action heard on 23rd and 24th November, 1948. In January, 1949, the plaintiffs' solicitor lodged a bill of costs "to be taxed pursuant to the judgment." That bill was duly taxed on 21st November, 1949, and £433 16s. was allowed. An order to pay was obtained, and after various proceedings, which included the issue of a bankruptcy notice, payment was made in June, 1950. Barclays Bank, Ltd., had been appointed administrator *pendente lite*, but the costs incurred by them, expenses incurred on their behalf, their remuneration, and the fee on passing accounts, had not been included in the original bill of costs. In September, 1950, these matters were taxed, and the allocatur endorsed. The registrar, however, refused to issue an order to pay. The plaintiffs appealed. (*Cur. adv. vult.*)

Wallington, J., said that the plaintiffs had cited *Silkstone and Haigh Moor Colliery Co.* v. *Edey* [1901] 2 Ch. 652, *Davis* v. *Earl of Dysart* (1855), 21 Beav. 124, and *Chessum and Sons* v. *Gordon* [1901] 1 Q.B. 694. These cases were to be distinguished. The costs of administration ought to have been included in a bill carried in for taxation when the taxation of costs was first taken in hand. In submitting to taxation and obtaining payment of the £433 16s. the plaintiffs' solicitor had made it clear to the defendant that that was the bill of costs taxable pursuant to the judgment, and he must have concluded that his liability for costs under the judgment had been satisfied. In his (his lordship's) opinion the plaintiffs, who had submitted to and obtained taxation, and incidentally payment, of their costs, were not entitled to tax, as between party and party, any further bill. A litigant in possession of a judgment for costs must lodge a bill including *all* the costs to which the judgment entitled him, and could not, after selecting a portion of the costs for taxation, make a further selection of other items. Appeal dismissed with costs. Leave to appeal refused.

Appearances: *G. Crispin* (*Teff & Teff*); *Charles Lawson* (*Thornton, Lynne & Lawson*).

[Reported by John B. Gardner, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

HOUSE OF LORDS

A. Progress of Bills

Read First Time :—

British Transport Commission Bill [H.C.] [27th May.
Children and Young Persons (Amendment) Bill [H.C.] [26th May.
Cremation Bill [H.C.] [26th May.
Crown Lessees (Protection of Sub-tenants) Bill [H.C.] [26th May.
Glossop Water Bill [H.C.] [27th May.

Read Second Time :—

Corneal Grafting Bill [H.C.] [27th May.
Pier and Harbour Provisional Order (Falmouth) Bill [H.C.] [28th May.

Read Third Time :—

Canterbury and District Water Bill [H.L.] [27th May.
London County Council (Money) Bill [H.C.] [27th May.
Manchester Ship Canal Bill [H.L.] [27th May.
New Towns Bill [H.C.] [28th May.

B. Questions

Copyright Law

The Earl of Birkenhead said that the Committee set up by the Board of Trade on 10th April, 1951, to consider and report on any changes desirable in the copyright law was engaged in drafting its report, but he could not say at present when it would be published. [27th May.

HOUSE OF COMMONS

A. Progress of Bills

Read Second Time :—

Brighton Corporation (Trolley Vehicles) Provisional Order Bill [H.C.] [28th May.
Derby Corporation (Trolley Vehicles) Provisional Order Bill [H.C.] [28th May.
Distribution of German Enemy Property Bill [H.L.] [29th May.
Governesses Benevolent Institution Bill [H.L.] [26th May.
Motor Vehicles (International Circulation) Bill [H.L.] [29th May.
Pier and Harbour Provisional Order (Brighton) Bill [H.C.] [28th May.
Pier and Harbour Provisional Order (Great Yarmouth) Bill [H.C.] [28th May.
Pier and Harbour Provisional Order (Herne Bay) Bill [H.C.] [28th May.
Pier and Harbour Provisional Order (King's Lynn) Bill [H.C.] [28th May.
Pier and Harbour Provisional Order (Minehead) Bill [H.C.] [28th May.
Pier and Harbour Provisional Order (Seaham Harbour) Bill [H.C.] [28th May.
Portsmouth Corporation (Trolley Vehicles) Provisional Order Bill [H.C.] [28th May.
Tottenham Corporation Bill [H.L.] [26th May.

Read Third Time :—

Electricity Supply (Meters) Bill [H.C.] [29th May.
Family Allowances and National Insurance Bill [H.C.] [29th May.

In Committee :—

Finance Bill [H.C.] [28th May.

B. Debates

On the Third Reading of the **Crown Lessees (Protection of Sub-tenants) Bill,** Sir Austin Hudson moved an amendment to cl. 2 (consequential provisions) designed to make it quite clear that those who came under the Bill should have the right to go before a rent tribunal, in appropriate circumstances, and to have a reasonable rent determined in the same way as those who came under the Landlord and Tenant (Rent Control) Act, 1949. The amendment would also ensure that s. 1 (7) of that Act, which precluded applications to the tribunal in respect of premises rent-restricted by enactments other than the Rent Acts, did not apply to premises rent-restricted by the Bill. The amendment was agreed to.

Mr. David Weitzman said the Bill was very useful, but he regretted that it was limited in its scope in that it did not apply to the direct tenants of the Crown and to Government departments. Mr. Marples said that, though short, the Bill was most complicated and difficult for the layman to understand. The Government, however, gave it its blessing in that it protected a worthy class of people from unscrupulous persons who had taken advantage of a loophole in the Rent Restrictions Acts. [23rd May.

On the report stage of the **Children and Young Persons (Amendment) Bill,** Mr. Charles Royle moved an amendment to cl. 1 (Definition of "in need of care and protection") designed to provide that truancy from school or persistent irregularity should in certain circumstances come under the term "in need of care and protection." As the law stood many months sometimes elapsed before these children were brought before juvenile courts or their parents were brought before an adult court. If the definition were thus extended, the matter could be dealt with more speedily. Mr. Barnett Janner supported the amendment and said that at present the magistrates who dealt with truancy matters were not acquainted with juvenile cases. It would be better for these matters to go to the juvenile courts which would investigate the home conditions of the child. Sir Herbert Williams said the amendment was nonsense. Often children were kept away from school by their parents, yet the amendment said that persistent absence should "be evidence that the child was beyond the control of his parents." Mr. Charles Doughty said the amendment meant that the mere evidence of the attendance officer that the child had been persistently irregular in attendance should in itself be evidence that the child was beyond control. The child might be irregular for instance because the parents made it deliver papers in the morning. It might well be the parents who were beyond control. Sir Hugh Lucas-Tooth said that an Education (Miscellaneous Provisions) Bill was in course of preparation and the Minister intended therein to amend s. 40 of the Education Act, 1944, the effect of which would be to enable a local authority to bring children directly before a juvenile court on the ground of failure to attend regularly at school. It was hoped to introduce the Bill this session. Mr. Royle withdrew his amendment.

Next, Mr. Hynd moved an amendment to cl. 6 (approved school order). As the clause stood children would be sent first to a remand home, then there would be inquiries, then they would come before the court again, and be committed to an approved school. Then they would go to a "classifying" school. He saw no reason for that, if the remand home could itself provide sufficient facilities for observation and classifying. The Council of the Magistrates Association was strongly in favour of his amendment. In many cases the magistrates themselves, with the help of their probation officers, could say to which kind of approved school a boy or girl should be committed. It was quite wrong to send all these children to a "classifying" school. Mr. Norman Cole opposed the amendment. There were some seventy remand homes and five classifying schools. For some eight years the classifying school procedure had been in operation. The effect of the amendment would be that all these remand homes would be doing their own classifying with a complete lack of integration. The magistrates, who after all were judicial and administrative bodies, would be in negotiation with some seventy different bodies.

Mr. Parnell said juvenile magistrates did not necessarily enjoy the confidence which Mr. Royle and the Council of Magistrates seemed to imagine. Mr. Chuter Ede said that when he was Home Secretary he was distressed at the rapid way in which vested interests grew up in every effort to secure reform in our penal system. This was an effort by some people who had not been in existence themselves very long to maintain that they were the people and that wisdom perished if anyone else was consulted about the task to which they had been appointed. He was, he said, criticising the juvenile magistrates. They had only limited opportunities as compared with the staff of the classifying schools. They did not get reports from people who had lived with the juveniles but from people who saw the children in very artificial circumstances. He strongly opposed the amendment. Sir Hugh Lucas-Tooth said he very much agreed

with Mr. Chuter Ede. Juvenile courts came to judicial decisions: they were not administrative bodies. It would be quite wrong for them to have the responsibility for seeing that administrative action was taken. The amendment was negatived.

[23rd May.

On the motion for the adjournment Mr. FRANK BESWICK raised the question of the **provision of caravan sites.** It was estimated that 250,000 people were now living permanently in caravans and about 15,000 new caravans were being sold annually. Some site owners were exploiting the situation and deriving incomes of £2,000 to £4,000 a year from the provision of a few acres of parking space and primitive facilities. He suggested that this was a national problem and that the Government and local authorities did not at present possess the necessary powers to deal with it. In one case a person got a tenancy of twenty acres in November, 1949. He put two caravans on and charged 10s. 6d. a week site rent. The local authority discovered the site when a dozen caravans appeared. They pointed out to the occupiers and the owner that they had no planning permission. There was no reply. More caravans arrived. A summons was taken out against the owner for failing to answer the notice and give information about the ownership. He feigned ignorance, but eventually gave the information. The council served an enforcement notice. Caravans continued to arrive. On the last day before it became operative the owner put in an application for planning permission. Now there were 100 caravans. The urban district council refused planning permission and on the last day before that refusal became effective the owner appealed to the Ministry. There were further delays. A hearing date was fixed and then adjourned. More caravans arrived. Eventually the Minister gave temporary planning permission. The obvious reason was because a refusal would involve hardship to all the caravan occupiers who were on the land quite innocently. The urban and county authorities would find it impossible to provide alternative accommodation for all these homeless families. What were they supposed to do when the temporary permission expired on 1st October next? It was as difficult for the local authority to operate the provisions of the Town and Country Planning Act, 1947, as it was easy for the developer to evade it.

In Middlesex, where the problem was very great, the Middlesex County Council Act, 1944, contained provisions about moveable dwellings but its weakness was that it laid down that a caravan could not be used as a sole means of habitation for a period of more than three months in any one year. This meant there was a delay of at least three months before any action could be taken. Then there were lengthy appeal procedures and by the time they were exhausted the offender had accumulated many unfortunate families, which protected him.

He hoped the Minister would use his considerable powers of persuasion to encourage local authorities to provide properly equipped and fairly rented sites. To meet the unscrupulous caravan distributor who sold his caravans by persuading the purchasers that authorised sites were available, could not the vendors of caravans be compelled to give with each one a statement of the law as it related to the parking of caravans? This would prevent the deception of a home-hungry family through the sale of another caravan which could not be parked without committing an offence.

Mr. ERNEST MARPLES in reply said that in the Home Counties there was undoubtedly a grave problem caused by caravans. In Middlesex a large number had been evicted into neighbouring counties who were alarmed at the numbers exported by Middlesex. He did not think it was a problem to be dealt with by national and uniform measures because its incidence was not uniform. The local authorities had power to develop their own sites or to licence properly run sites owned by commercial firms. Many authorities already had their own sites. The Ministry would do all in its power to help, but was chary of actively promoting this movement lest it further encourage people to seek sub-standard accommodation on an even greater scale than at present. As regards the complaint about existing enforcement procedure—a site owner could only exploit these delays once, and even if the powers could be exercised more quickly, the shorter notice would inflict greater hardship on the caravan dwellers. After all, these were in fact people being ejected from their homes. The only real remedy to the present situation was the provision of more permanent houses. [22nd May.

C. QUESTIONS

CHILDREN'S PASSPORTS (DIVORCED AND SEPARATED PARENTS)

Mr. REGINALD GROSVENOR asked the Foreign Secretary whether he would clarify the position of applicants for passports who were under age to ensure the acceptance of the mother's responsibility and permission where she had been divorced or was living apart from her child's father, but the child or young person was living with her. Mr. SELWYN LLOYD said the general rule was that a passport might be granted to a child with the consent of the legal guardian, who, under English law and in normal circumstances, was the father. If the parents were separated or divorced and the legal custody of the child had been transferred by order of the court to the mother, the rights, as well as the duties, of guardianship, devolved upon the mother, subject to any conditions mentioned in the order, so long as the order of the court remained operative. Passport facilities would be granted in such a case with the consent of the mother, due regard being had, however, to any rights of access to the child which might have been reserved to the father in the court order. Where there had not been a transference of legal custody but the child was living with the mother, the Passport Office had a certain discretion as to the issue of passports.

No reply was given to a supplementary question by Lieut.-Col. LIPTON to the effect that passports were often issued without any inquiry of the kind mentioned by Mr. Selwyn Lloyd, and that once a passport was issued no further inquiries were made by the Foreign Office or by the Home Office before the child was taken from the country, either by a relative or by some person who was not in any way related to the child. [26th May.

CRIMINAL JURISDICTION (MURDER TRIALS)

Asked by Mr. G. THOMAS whether he would introduce legislation to ensure that any persons except those covered by diplomatic immunity, charged with the murder of a British citizen in this country, should be tried by a British court, Sir DAVID MAXWELL FYFE said that the effect of the United States of America (Visiting Forces) Act, 1942, was that the United States authorities had exclusive criminal jurisdiction over members of their forces in this country unless they waived the jurisdiction, but an agreement signed last year between the parties to the North Atlantic Treaty, including the United States and the United Kingdom Governments, contemplated the substitution of new arrangements. Before this country could ratify that agreement, it would be necessary to amend our law, and he was not yet in a position to say when the necessary legislation would be introduced. [26th May.

WAR DAMAGE (BUSINESSES)

Mr. H. STRAUSS stated that the general settlement of claims under the War Damage Act, 1943 (Pt. II, Business Scheme), would have to await the fixing of a date by the Treasury under s. 85 (1) of that Act. In the meantime, claims were being paid in whole or in part where the Board of Trade was satisfied either that the replacement or repair of the goods was expedient in the public interest or that it was expedient to make payment in order to avoid undue hardship. [27th May.

HOUSES (DEREQUISITIONING)

Mr. MARPLES stated that 1,446 houses and flats were released from requisition between 1st January and 30th April, 1952, as compared with 1,220 for the same period last year. Where a local authority desired to retain control of these premises for the discharge of their housing duties, it was open to them to make use of their powers of acquisition under the Housing Acts.

[27th May.

HOUSING ACT, 1949 (IMPROVEMENT GRANTS)

Mr. MARPLES stated that 1,610 successful applications for improvement grants under s. 20 of the Housing Act, 1949, had been made up to the 31st March last. [27th May.

JUSTICE OF THE PEACE ACT, 1361

Mr. FENNER BROCKWAY asked the Home Secretary whether he would introduce legislation to repeal the Justice of the Peace Act, 1361. Had not high legal authorities, including Stone, drawn attention to the very wide character of this Act and had

not its recent use in the case of a lady who had protested at the performance of a film shown the need for some reconsideration of the Act? The HOME SECRETARY said he assumed Mr. Brockway referred to that part of the Act which enabled a court to order a person to find sureties for good behaviour. He knew of no sufficient grounds for introducing legislation to repeal this provision, which in his view provided a useful measure or preventive or precautionary justice, the exercise of which did not amount to a conviction. A person did not go to prison if he found sureties. In his view, the general use of the powers had been salutary and helpful to the persons concerned. [29th May.

OBSCENE PRESS ARTICLES (PROSECUTIONS)

Asked by Sir WALDRON SMITHERS whether he would bring to the notice of the Director of Public Prosecutions obscene headlines and articles in certain newspapers, particulars of which had been sent to him, the HOME SECRETARY said the Home Office was not a prosecuting authority, but he had no doubt that the appropriate authorities would take appropriate action in respect of any offences against the law of obscenity which came to notice. Broadly speaking, the prosecuting authorities were the chief constables in their various areas. [29th May.

ARRESTED PERSONS (ACCESS)

Mr. LOGAN asked the Home Secretary whether he was aware that a Member who wished to see a constituent, who had been reported to him as having been batoned by the police, was not allowed to visit his constituent in prison. Would he therefore issue a circular to all police forces instructing them to give Members of Parliament special facilities to visit such of their constituents as were held in custody by the police. Sir DAVID MAXWELL FYFE said that any suggestion that a member of a borough police force had been guilty of misconduct was a matter for the Watch Committee, which was in law the body responsible for the disciplinary control of the force. He had inquired into the incident and was assured that there was no truth in the allegation that this prisoner, who had now been before the court, had been assaulted by the police. Facilities for allowing access to visitors to prisoners in police custody were a matter for chief constables to decide in the light of the facts, subject to the principle that a prisoner should be given every opportunity to consult with his friends or legal advisers, and he had no reason to think that if a prisoner asked to see his Member of Parliament and the Member wished to see him, he would not normally be permitted to do so. He thought that in this particular case the prisoner should have been asked whether he wished to see the Member of Parliament, and he was so informing the chief constable. He did not think that this isolated incident afforded sufficient grounds for issuing any general guidance to chief constables. [28th May.

METROPOLITAN POLICE COURTS

Sir DAVID MAXWELL FYFE said he was aware of the heavy pressure of work on the Metropolitan Police Courts at Marylebone and West London, but the restrictions on capital investment precluded his accepting Mr. MALONE'S suggestion that a new court should be set up to cover the areas of Paddington and North Kensington. He was considering certain other proposals for providing some measure of relief. [28th May.

LEGAL AID SCHEME (DIVORCES)

The ATTORNEY-GENERAL stated that about 71 per cent. of those receiving legal aid last year were seeking divorce. The total expenditure under the legal aid scheme in England and Wales last year was £1,167,326, of which £211,465 came from public funds. These figures were provisional and subject to audit and no statistics were available to show how much was spent on those seeking divorces. [29th May.

STATUTORY INSTRUMENTS

Air Corporations Act (Isle of Man) Order, 1952. (S.I. 1952 No. 1033.) 5d.

Aliens (Employment) (Polish Forces) (Revocation) Order, 1952. (S.I. 1952 No. 1017.)

Aliens (Employment) (Polish Resettlement Forces) (Revocation) Order, 1952. (S.I. 1952 No. 1015.)

Aliens (Restriction) (Polish Resettlement Forces) (Revocation) Direction, 1952. (S.I. 1952 No. 1016.)

Baking Wages Council (England and Wales) Wages Regulation (Amendment) Order, 1952. (S.I. 1952 No. 1007.) 6d.

Bechuanaland Protectorate (Bamangwato Succession) Order in Council, 1952. (S.I. 1952 No. 1031.) 5d.

Berwick-upon-Tweed Harbour Commission (Registers of Shipowners and Ratepayers) Order, 1952. (S.I. 1952 No. 1041.)

Draft **Building** (Safety, Health and Welfare) Amendment Regulations, 1952.

Civil Aviation Act (Isle of Man) Order, 1952. (S.I. 1952 No. 1032.) 5d.

Defence Regulations (No. 1) Order, 1952. (S.I. 1952 No. 1036.)

Gold Coast (Constitution) (Amendment) (No. 2) Order in Council, 1952. (S.I. 1952 No. 1039.) 6d.

Import Duties (General Ad Valorem Duty Reduction) Order, 1952. (S.I. 1952 No. 996.)

Income Tax (Employments) (No. 3) Regulations, 1952. (S.I. 1952 No. 1004.)

National Health Service (Charges for Dental Treatment) Regulations, 1952. (S.I. 1952 No. 1020.)

National Health Service (Charges for Drugs and Appliances) Regulations, 1952. (S.I. 1952 No. 1021.) 5d.

National Health Service (Charges for Drugs and Appliances) (Scotland) Regulations, 1952. (S.I. 1952 No. 1026 (S. 45).) 5d.

National Health Service (Charges for Hospital Accommodation) (Scotland) Amendment Regulations, 1952. (S.I. 1952 No. 1028 (S. 47).)

National Health Service (General Dental Services Charges) (Scotland) Regulations, 1952. (S.I. 1952 No. 1027 (S. 46).)

National Health Service (Hospital Charges for Drugs and Appliances) Regulations, 1952. (S.I. 1952 No. 1023.) 5d.

National Health Service (Hospital Charges for Drugs and Appliances) (Scotland) Regulations, 1952. (S.I. 1952 No. 1025 (S. 44).) 5d.

National Health Service (Pay-Bed Accommodation in Hospitals, etc.) Amendment Regulations, 1952. (S.I. 1952 No. 1022.)

National Insurance (Classification) Amendment (No. 2) Regulations, 1952. (S.I. 1952 No. 1024.)

National Insurance (Contributions) Amendment Provisional Regulations, 1952. (S.I. 1952 No. 1006.) 5d.

National Insurance (Industrial Injuries) (Medical Certification) Amendment Regulations, 1952. (S.I. 1952 No. 993.) 6d.

National Insurance (Medical Certification) Amendment Regulations, 1952. (S.I. 1952 No. 992.) 6d.

National Insurance (Residence and Persons Abroad) Amendment Provisional Regulations, 1952. (S.I. 1952 No. 1030.) 5d.

National Registration Act (End of Emergency) Order, 1952. (S.I. 1952 No. 1035.)

Norman Cross–Grimsby Trunk Road (Kelsey House Diversions) Order, 1952. (S.I. 1952 No. 1000.) 5d.

North-West of Hatch End–Cassio Bridge Trunk Road Order, 1952. (S.I. 1952 No. 1010.)

Official Secrets (Jersey) Order in Council, 1952. (S.I. 1952 No. 1034.)

Singapore Colony (Amendment) Order in Council, 1952. (S.I. 1952 No. 1040.)

Stopping up of Highways (Devonshire) (No. 2) Order, 1952. (S.I. 1952 No. 1002.)

Stopping up of Highways (North Riding of Yorkshire) (No. 1) Order, 1952. (S.I. 1952 No. 1011.)

Stopping up of Highways (Southampton) (No. 1) Order, 1952. (S.I. 1952 No. 1003.)

Stopping up of Highways (Surrey) (No. 1) Order, 1952. (S.I. 1952 No. 1001.)

Superannuation (Teaching and Public Boards) Amending Rules, 1952. (S.I. 1952 No. 1012.)

Taunton Corporation Water Order, 1952. (S.I. 1952 No. 1045.)

Uganda (Public Office) Order in Council, 1952. (S.I. 1952 No. 1038.)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d. post free.]

The International Law Commission, a subsidiary organ of the General Assembly of the United Nations, met for its fourth session on 4th June in Geneva. The provisional agenda included the consideration of reports on the codification of arbitral procedure, the law of treaties and the regime of the high seas.

NOTES AND NEWS

Honours and Appointments

Mr. J. H. CRAIK, assistant solicitor to Wigan Corporation, has been appointed deputy Town Clerk to the Corporation.

Dr. R. Y. HEDGES, lately Chief Justice, Sarawak, and at present Commissioner for Law Revision, Brunei, has been appointed a Puisne Judge, Nigeria.

Miscellaneous

COUNTY OF WORCESTER DEVELOPMENT PLAN

The latest date for sending representations and objections to the Ministry of Housing and Local Government has been altered from 30th April to 14th July, 1952.

Charges at Somerset House and locally for certificates of births, marriages and deaths, and fees for marriages and marriage licences, will be raised on 1st July. Increased fees will be charged for such services as searches in the indexes and late registration. There will be no increase in the fees for the special cheap certificates of births, marriages or deaths prescribed under various Acts, and the registration of births, marriages and deaths will continue to be free.

THE SOLICITORS ACTS, 1932 TO 1941

On the 23rd May, 1952, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that there be imposed upon FRED CRASTON WHITE, of 27-31 Belvoir Street, Leicester, a penalty of one hundred and fifty pounds, to be forfeit to Her Majesty, and that he do pay to the complainant his costs of and incidental to the application and inquiry.

On the 23rd May, 1952, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of MAURICE ARTHUR SALTER, of Pemberley, Rowledge, Farnham, Surrey, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On the 23rd May, 1952, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that there be imposed upon WILLIAM MARTIN MEREDITH, of 4 Nettleton Grove, Blackley, Manchester, 9, a penalty of fifty pounds, to be forfeit to Her Majesty, and that he do pay to the complainant his costs of and incidental to the application and inquiry.

Wills and Bequests

Sir Robert C. Witt, C.B.E., retired solicitor, formerly of Old Broad Street, London, E.C.2, one of the founders and former chairman of the National Art Collections Fund, left £69,737.

He left £10,000 (on the death of his wife) and his collection of old masters and modern drawings, not otherwise bequeathed, to the Courtauld Institute, to be known as the Witt Collection; his caricatures by P. Paubridge, W. K. Haselden, and F. C. Gould ("Hans Across the Sea") and £500, payable on the death of his wife, to the National Art Collections Fund; the portraits of himself by Birley and Dugdale to the Courtauld Institute to be hung with his library there; the portrait of a young man and the portrait of a sculptor by M. Sweerts and Hogarth's sketch for the Rake's Progress to the Ashmolean Museum, Oxford; subject to life interests his cloud sketch by Constable and his picture by the Master of St. Bartholomew to the Courtauld Institute; and the residue upon trust for his wife for life and then after a large legacy the remainder to the Courtauld Institute for Art.

OBITUARY

MR. E. D. M. BARLAS

Mr. Ernest Douglas Montague Barlas, solicitor, of Chandos Street, Cavendish Square, London, W.1, died on 26th May, aged 66. He was admitted in 1913.

MR. L. W. REES

Mr. Lewis William Rees, solicitor, of Barry, died recently. He was admitted in 1929.

SOCIETIES

THE LAW SOCIETY

The annual general meeting of the members of The Law Society will be held in the Hall of the Society on Friday, 4th July, at 2 p.m.

The following are the names of the members of the Council retiring by rotation: Mr. Bateson, Sir Bernard Blatch, Mr. Coleman, Mr. Collins, Mr. Fawcett, Mr. Peppiatt, Mr. Pitt-Lewis, Mr. Scott, Mr. Sherwell and Mr. Yeaman.

So far as is known, with the exception of Mr. Coleman, they will be nominated for re-election.

There is one other vacancy, caused by the death of Mr. Fred Webster.

THE WORSHIPFUL COMPANY OF SOLICITORS OF THE CITY OF LONDON

At the Election Court held on St. Yves day, 19th May, 1952, in the Council Chamber, H.M. Tower of London, the following officers were elected for 1952–53 and take office on 26th June, 1952: Master: Lt.-Col. R. Q. Henriques, T.D., J.P.; Senior Warden: Mr. E. Alston Mott; Junior Warden: Mr. C. E. Mills, J.P.; Senior Steward: Lt.-Col. and Alderman Sir G. J. Cullum Welch, O.B.E., M.C.; Junior Steward: Mr. R. T. D. Stoneham, C.B.E., C.C.

Mr. D. Rapoport, Mr. R. M. Borm-Reid and Mr. E. E. L. Giuseppi were admitted to the Freedom and Mr. C. K. Metcalfe was admitted to the Livery of the Company.

At the conclusion of the Court Meeting, members of the Company and their ladies attended the Annual Guild Service at The Chapel Royal of St. Peter ad Vincula at which the address was given by The Rt. Rev. The Lord Bishop of Croydon, and afterwards enjoyed a private view of the Crown Jewels.

The SOLICITORS' ARTICLED CLERKS' SOCIETY are arranging a conducted tour around the Houses of Parliament, for members only, at 1s. per head, on Saturday, 21st June, at 3.30 p.m. As numbers are strictly limited members are requested to apply as soon as possible to Mr. P. L. Rose, S.A.C.S., Law Society's Hall, Chancery Lane, W.C.2.

Full details of the June activities of S.A.C.S. are contained in the monthly magazine of the Society which is issued free to members. Inquiries regarding membership and activities of the Solicitors' Articled Clerks' Society should be made to the Secretary, S.A.C.S., address as above.

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Advertisements must be received first post Wednesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).